IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.681/2005.
(Harish Mourya Vs. State of Rajasthan)

DATE OF ORDER : September 7th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. P.C. Solanki for the petitioner.
Mr. Vishnu Kachchhawaha, P.P. for the State.

BY THE COURT :

By way of filing this revision petition, the petitioner has challenged order dated 07.07.2005 passed by the learned Addl. Sessions Judge No.2, Chittorgarh in Sessions Case No.56/2004 by which application filed by the petitioner under Section 311, Cr.P.C. was allowed.

According to facts of the case, challan was filed against the petitioner and six other persons for

offences under Sections 323, 341 and 307, I.P.C. and during the course of trial eleven witnesses were examined on behalf of the prosecution and, after completion of the evidence of P.W.-11 Puran Singh, S.H.O., an application was filed by the prosecution on 07.06.2005 under Section 311, Cr.P.C. for summoning one additional witness viz., Dr. M.R. Agarwal, MR Baheti Hospital, Kota. Reply to the said application was filed on behalf of the petitioner and other accused persons. The learned trial Court allowed the said application vide its order dated 07.07.2005.

The contention of the petitioner is that the trial Court has committed error while allowing the application filed by the prosecution under Section 311, Cr.P.C. and the trial Court has not taken into consideration the evidence of P.W.-1 Rajendra Singh (investigating officer) and P.W.-4 Dr. Rajeev Saxena. According to the petitioner, both these witnesses have not named the witness so summoned by the trial Court, therefore, the application filed under Section 311, Cr.P.C. is after-thought because earlier P.W.-9 Mukesh Samariya (Radiographer) and P.W.-11 Pooran Singh, S.H.O. were dropped as prosecution witnesses; but, later on, they were examined in the Court. The main argument advanced by learned counsel for the petitioner is that application under Section 311, Cr.P.C. cannot be filed by either of the parties and

though the application was not argued before the trial Court on this ground nor that ground was mentioned in the application, under Section 311, Cr.P.C. the Court can exercise its powers for summoning the witnesses for proper adjudication. In support of his argument, learned counsel for the petitioner has invited my attention towards the judgment of this Court reported in 1998 Cr.L.R. (Raj.) 773, Prem Raj Vs. State of Rajasthan & Others and argued that in this case, at para 5, this Court has held that Section 311 of the Criminal Procedure Code itself makes it clear that power has been given to the Court to examine or re-examine any person as witness if the Court considers it necessary to do so for the just decision of the case. Further, it is argued that according to this judgment, if Section 311 is read with Section 165 of the Evidence Act, it would be clear that power under Section 311, Cr.P.C. and Section 165, Evidence Act is conferred on the Court and not on the parties, therefore, it is the Court alone which can exercise power under Section 311, Cr.P.C. If the Court is of the opinion that it is necessary to do so for the just decision of the case, the examination and re-examination which is contemplated by Section 311 of the Criminal Procedure Code and Section 165 of the Evidence Act is to be made by the Court and not by the Court for the purpose of enabling any party to examine

or re-examine the witness. It would be impermissible to do so. Of course, the Court has unfettered powers to examine and re-examine any witness under Section 311, Cr.P.C. at any time in any inquiry or trial.

I am unable to understand the argument advanced by learned counsel for the petitioner with regard to maintainability of the application filed by the prosecution under Section 311, Cr.P.C. It is no doubt true that the power to examine or re-examine witnesses is left to the Court but, for that purpose, as is clear from the language of the section itself, the right to invoke the power so vested in the Court under Section 311, Cr.P.C. is available to the parties also and, therefore, the parties can file application and invite attention of the Court that for the purpose of fair trial and just decision examination or re-examination of a witness is necessary. Similarly, the Court can suo moto exercise the power. Thus the legislature has purposefully conferred power under Section 311 of the Code upon the Court for fair adjudication and to secure the ends of justice and duty is cast upon the Court that, if it is necessary to examine or re-examine any witness then the power can be exercised even at the instance of the prosecution, or defence, or suo moto. Therefore, in my opinion, the Court cannot shut the doors to either of the parties for examination or re-examination of

any witness. In this view of the matter, therefore, the judgment cited by learned counsel for the petitioner, more particularly, supports the proposition of law with regard to fair trial and the argument of the learned counsel for the petitioner with regard to maintainability of the application filed by the prosecution under Section 311, Cr.P.C. is totally baseless and has no foundation to stand before the eye of law.

As such upon above discussion it is held that under section 311, Cr.P.C. either party can file application and it is required to be considered by the trial Court with due application of mind. So also, the Court can also exercise such power suo moto under Section 311, Cr.P.C. for just decision of the case. Therefore, I see no reason to interfere with the order passed by the trial Court.

Hence, this petition is dismissed.

(Gopal Krishan Vyas) J.